

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-300-C - ORDER NO. 97-957
NOVEMBER 10, 1997

JAR

IN RE: Application of US LEC of)	ORDER
South Carolina, L.L.C. for a)	APPROVING
Certificate of Public Convenience)	CERTIFICATE TO
and Necessity to Provide Resold)	PROVIDE LOCAL
and Facilities-Based Local Exchange)	AND LONG DISTANCE
and Exchange Access Telecommunica-)	RESOLD AND
tions Services throughout the State)	FACILITIES-BASED
of South Carolina and to Provide)	TELECOMMUNICATIONS
Resold and Facilities-Based)	SERVICES
Intrastate Interexchange Tele-)	
communications Services within)	
and throughout the State of)	
South Carolina.)	

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of an Application filed by US LEC of South Carolina, L.L.C. ("US LEC" or "the Company") in which US LEC requested that the Commission grant a Certificate of Public Convenience and Necessity to allow the Company (1) to provide resold and facilities-based local exchange and exchange access telecommunications services throughout South Carolina and (2) to provide resold and facilities-based intrastate interexchange telecommunications services within the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter dated August 25, 1997, the Commission's Executive Director instructed US LEC to publish, one time, a prepared Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing and Hearing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. US LEC complied with this instruction and provided the Commission with proof of publication of the Notice of Filing and Hearing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on October 30, 1997, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. US LEC was represented by Sam Applegate, Esquire and Joseph W. Eason, Esquire. Mr. Eason is a member in good standing in the North Carolina Bar Association, and upon motion of Mr. Applegate, who is a member in good standing in the South Carolina Bar Association, Mr. Eason was admitted pro hac vice in the proceedings before the Commission. The Commission Staff ("Staff") was represented by Florence P. Belser, Staff Counsel. SCTC did not appear at the hearing.

Prior to the hearing, US LEC and the SCTC executed a Stipulation dated September 26, 1997. The Stipulation was filed with the Commission prior to the hearing. The Stipulation was entered into evidence at the hearing as Hearing Exhibit No. 1. The Stipulation provides the following:

- (1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and

Necessity to US LEC if the Commission makes the necessary findings to justify granting the Certificate and provided all stipulated conditions are met;

- (2) US LEC agrees that any Certificate granted by the Commission will authorize US LEC to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;
- (3) US LEC agrees that it is not requesting the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas;
- (4) US LEC agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until US LEC provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. US LEC also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;
- (5) US LEC agrees that if, after US LEC gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then US LEC will not provide service to any customer located within the service area in question without prior and further Commission approval;
- (6) US LEC acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may

implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;

- (7) US LEC and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and
- (8) US LEC agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and US LEC and was filed with the Commission prior to the hearing in this matter. We therefore accept and approve the Stipulation.

At the hearing on this matter, US LEC presented Tansukh V. Ganatra to testify in support of the Application. Mr. Ganatra is the President and Chief Operating Officer of US LEC. The purpose of Mr. Ganatra's testimony was to discuss the Application and the qualifications of US LEC to provide the services for which US LEC seeks authority.

DISCUSSION

With respect to local exchange service, the record reveals that US LEC seeks authority to provide resold and facilities-based local exchange and exchange access services. S.C. Code Ann. §58-9-280 (Supp. 1996) provides that "the [C]ommission may grant a certificate to operate as a telephone utility ... to applicants

proposing to furnish local telephone service in the service territory of an incumbent LEC."

After full consideration of the applicable law, US LEC's Application, and the evidence presented at the hearing, the Commission finds and concludes that US LEC's request for a Certificate to provide local telephone service in the form of resold and facilities-based local exchange and exchange access services should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented which relates to that criteria:

(1) The Commission finds that US LEC possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). To demonstrate US LEC's technical qualifications, witness Ganatra testified that an operating affiliate of US LEC is currently providing local service to customers in North Carolina. Mr. Ganatra also stated that US LEC and its affiliates have acquired the latest versions of the 5ESS switch and equipment from Lucent Technologies, Inc. Mr. Ganatra also testified that US LEC's facilities will be supported by a state-of-the-art network operation center with 24 hour customer support.

Concerning US LEC's managerial qualifications, Mr. Ganatra testified that US LEC's management team has considerable experience and expertise in the telecommunications industry. According to the record, Mr. Ganatra personally has over 28 years

of experience in all aspects of local and long-distance telecommunication, including engineering, operations, and management. Additionally, the Chairman and Chief Executive Officer, Richard T. Aab, has over 15 years of experience in telecommunications and has been a pioneer in introducing competition into monopoly-controlled segments of the telecommunications market since 1982.

Regarding US LEC's financial resources, Mr. Ganatra stated that US LEC is one of several operating subsidiaries of US LEC L.L.C., a Delaware limited liability corporation. US LEC and its parent's sources of capital include a combination of equity contributions, loans made by shareholders, and cash from operations. Mr. Ganatra stated that US LEC L.L.C has obtained private investments totaling fifteen million dollars (\$15,000,000) from approximately thirty (30) investors and that US LEC L.L.C. and its affiliates are committed to fully funding all of the capital requirements necessary to operate in South Carolina.

No party offered any evidence in opposition to Mr. Ganatra's testimony. Based on the undisputed testimony of Ganatra, the Commission finds that US LEC possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that US LEC will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Mr. Ganatra indicated that US LEC intends to offer high quality local exchange service that will

offer consumers a competitive alternative to the services offered by incumbent local exchange carriers. Mr. Ganatra specifically stated that US LEC will meet all service standards that the Commission has or may adopt. No party offered any evidence to dispute Mr. Ganatra's testimony. Based on the undisputed testimony from Mr. Ganatra, the Commission believes, and so finds, that US LEC will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that US LEC's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Mr. Ganatra stated that authorizing US LEC to provide service in South Carolina would not adversely impact affordable local exchange service and offered that certification of US LEC will make local exchange service more affordable. No party offered any evidence that the provision of local exchange service by US LEC would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by US LEC will not adversely impact affordable local exchange service.

(4) The Commission finds that US LEC will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Mr. Ganatra testified that US LEC, to the extent required to do so by the Commission, will participate in and support any program to assure universally available telephone service at affordable rates. No party

disputed Mr. Ganatra's testimony. Based on the undisputed evidence of record, the Commission finds that US LEC will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by US LEC "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996). Mr. Ganatra offered that approval of US LEC's application will serve the public interest by increasing competition which will produce higher service quality at lower prices, through increased innovation, efficiency and responsiveness of service. Mr. Ganatra's testimony was undisputed as no party offered any evidence that approval of US LEC's Application would adversely impact the public interest. Therefore, the Commission finds that approval of US LEC's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

In addition to requesting authority to provide local exchange service, US LEC requests authority to provide intrastate interexchange telecommunications services. As stated above, the record reveals US LEC's financial, technical, and managerial abilities to provide telecommunications services in South Carolina. The record further shows US LEC's services, operations, and marketing procedures. Upon full consideration of US LEC's Application and the evidence presented at the hearing, the Commission finds that US LEC has the experience, capability, and

financial resources to provide intrastate interexchange telecommunications services in South Carolina, and further the Commission finds and concludes that US LEC's request for a Certificate to provide intrastate interexchange telecommunications services should be granted.

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by US LEC should be granted.

IT IS THEREFORE ORDERED THAT:

1. US LEC is hereby granted a Certificate of Public Convenience and Necessity, and the accompanying authority, (1) to provide resold and facilities-based local exchange and exchange access telecommunications services throughout South Carolina and (2) to provide resold and facilities-based intrastate interexchange telecommunications services within the State of South Carolina. US LEC is hereby authorized to provide intrastate resold and facilities-based local exchange and exchange access telecommunications services in South Carolina, and US LEC is hereby authorized to provide resold and facilities-based intrastate interexchange services, including interLATA services in South Carolina and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to US LEC's local service offerings, US LEC shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes to the proposed tariff to which US LEC agreed with the Commission Staff.

3. The Commission adopts a rate design for US LEC for its resale and facilities-based intrastate interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. US LEC shall not adjust its rates for intrastate interexchange services below the approved maximum level without notice to the Commission and to the public. US LEC shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the

Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1996).

5. With regard to its intrastate interexchange services, US LEC shall file its revised maximum tariff and an accompanying price list within thirty (30) days from the date of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. With regard to its intrastate interexchange services, US LEC is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Company's interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. US LEC shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If US LEC changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, US LEC shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

10. US LEC shall file surveillance reports on a calendar or

fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. US LEC shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The proper form for filing the regulatory contact information is indicated on Attachment B. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

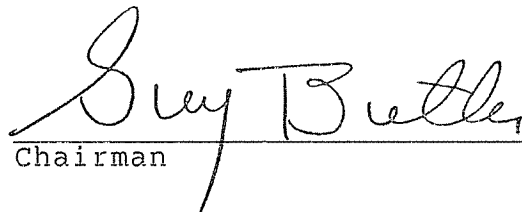
12. US LEC shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. The Stipulation filed by US LEC and the SCTC is approved by this Commission, is binding upon US LEC and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make

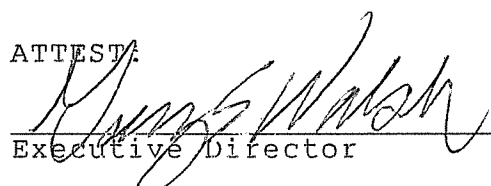
no findings or conclusions regarding competition in the rural areas of South Carolina.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director
(SEAL)

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NOVEMBER 10, 1997
ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

DOCKET NO. 97-300-C - ORDER NO. 97-957
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ATTACHMENT B

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230